

UNITED STATES DISTRICT COURT

Southern District of New York

In the Matter Of the Complaint Of  
Constitution State Service LLC

V.

DNA Gallery

CASE NUMBER:

**08 CV 1005**

*JUDGE SCHEINDLIN*

TO: (Name and address of Defendant)

DNA Gallery  
288 Bradford Street  
Provincetown, MA 02657

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Patrick J. Corbett, Esq.  
RUBIN, FIORELLA & FRIEDMAN LLP  
292 Madison Avenue, 11th Floor  
New York, NY 10017

an answer to the complaint which is served on you with this summons, within 30 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

*J. MICHAEL McMAHON*

CLERK

(By) DEPUTY CLERK

*JAN 31 2008*

DATE

		RETURN OF SERVICE	
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	TITLE	
NAME OF SERVER ( <i>PRINT</i> )		TITLE	
<i>Check one box below to indicate appropriate method of service</i>			
<input type="checkbox"/> Served personally upon the defendant. Place where served:			
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.			
Name of person with whom the summons and complaint were left:			
<input type="checkbox"/> Returned unexecuted:			
<input type="checkbox"/> Other (specify):			
<b>STATEMENT OF SERVICE FEES</b>			
TRAVEL	SERVICES	TOTAL	\$0.00
<b>DECLARATION OF SERVER</b>			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.			
Executed on _____	Date _____	<i>Signature of Server</i>	
<i>Address of Server</i>			

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Patrick J. Corbett (PC 2076)  
RUBIN, FIORELLA & FRIEDMAN, LLP  
292 Madison Avenue, 15th Floor  
New York, New York 10017  
Telephone: (212) 953-2381  
Facsimile: (212) 953-2462  
pcorbett@rubinfiorella.com

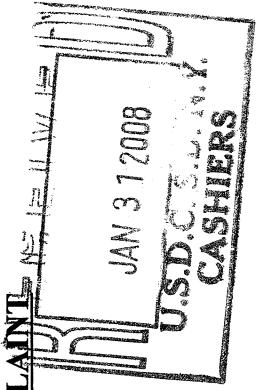
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
IN THE MATTER OF THE COMPLAINT OF  
CONSTITUTION STATE SERVICES LLC,  
Plaintiff,

-against-

DNA GALLERY, LLC,

Defendant.

JUDGE SCHEINDLIN  
**08-CV-10051**



PLAINTIFF, CONSTITUTION STATE SERVICES LLC, by its attorneys, Rubin, Fiorella & Friedman, LLP, as and for its complaint, alleges upon information and belief, as follows:

JURISDICTION AND VENUE

1. This is a complaint pursuant to 28 U.S.C. §1335, and U.S.C. §1332.
2. Plaintiff is a corporation existing under the laws of one of the fifty states, with an office and principal place of business in Wilmington, Delaware.
3. Defendant is a corporation existing under the laws of one of the fifty states, with an office and principal places of business in Provincetown, Massachusetts.
4. At all times material hereto, Defendant regularly conducted business in the State of New York.
5. On or about May 1, 2003, the Centennial Insurance Company ("Centennial"), an

Insurance Company organized under the laws of the State of New York, issued a policy of insurance, No. 208 30 0084, effective for 12 months from May 1, 2003, (a copy of which is annexed hereto as Exhibit "A", and made a part of this complaint), to DNA Gallery, LLC and Volume Gallery, insuring upon loss or damage to fine art as defined and described therein.

6. On or about October 1, 2003, Centennial entered into various agreements with The Travelers Indemnity Company ("Travelers") whereby Centennial sold, assigned, transferred and conveyed all of Centennial's rights, titles, and interest in various business which included the policy.
7. As part of those agreements, Centennial also agreed to a wholly owned subsidiary of Travelers, Constitution State Services, LLC ("Constitution"), taking over the claim adjusting of the policy including pursuing or defending any legal action connected with the policy.
8. On or about January 6, 2004, DNA Gallery made claim for loss and damage to its consigned property, in an amount exceeding \$2 Million.
9. Plaintiff has accepted the claim pursuant to its reservation of rights.
10. The policy provides in "Art, Antiques and Collectibles Dealers Coverage Form, E. Additional Conditions, 2. VALUATION (c)" that "Covered Property of others held by you on consignment or entrusted to you will be the consigned or entrusted value plus 10% . \*\* In the event of loss or damage, the value of the property will be determined as of the time of loss or damage."
11. The policy further states (COMMERCIAL INLAND MARINE CONDITIONS) (...apply in addition to the Common Policy Conditions and applicable Additional Conditions in Commercial Inland Marine Coverage Forms): "B. Appraisal. If we and you disagree on the value of the property or the amount of the loss, either may make a written demand for an appraisal. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by

a judge of a court having jurisdiction. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraiser will state separately the value of the property and the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will: 1. Pay its chosen appraiser; 2. Bear the other expense of the appraisal and umpire equally. If there is an appraisal, we will still retain our right to deny the claim."

12. Plaintiff and Insured's respective appraisers have been unable to agree upon the consigned value of claim, and the parties have not been able to agree upon an umpire.

13. Accordingly, it is respectfully requested that this Court appoint an umpire to value the claim pursuant to the policy herein, and for such other and further relief as this Court deems proper.

DATED: New York, New York  
January 30, 2008

Respectfully submitted,

RUBIN, FIORELLA & FRIEDMAN, LLP

  
\_\_\_\_\_  
Patrick J. Corbett (PC 2076)  
Attorneys for Plaintiff  
Constitution State Services LLC  
292 Madison Avenue, 15<sup>th</sup> Floor  
New York, New York 10017  
Telephone: (212) 953-2381  
Facsimile: (212) 953-2462  
[Pcorbett@rubinfiorella.com](mailto:Pcorbett@rubinfiorella.com)

To: DNA Gallery  
288 Bradford Street  
Provincetown, MA 02657

Andrew D. Epstein, Esq.  
Barker Epstein & Loscocco  
10 Winthrop Sq. Ste. 2  
Boston, MA 02110-1264

EXHIBIT “A”

**DeWitt Stern Group  
Art, Antiques & Collectibles Dealers  
Insurance Program**

This Declaration Page is attached to and forms a part of Policy Conditions.

**THIS IS TO CERTIFY THAT** the undersigned has procured insurance, in accordance with your instructions, as hereinafter described.

**Policy No.: 208 30 00 84**

This Policy is designed to cover Loss or Damage Insurance per the attached Policy form.

**INSURED:** DNA Gallery LLC and Volume Gallery Inc.  
530 West 24th Street  
New York, NY. 10011

**PERIOD:**

12 Months at May 1, 2003 12:01 A.M. Local Standard Time

**GOODS INSURED:** "Fine Arts" usual to the conduct of the Insured's business as more fully described and defined in the attached Coverage form.

**LIMIT OF INSURANCE:**

A. The most we will pay for loss or damage to Covered Property is the applicable Limit of Insurance shown below.

1. \$2,000,000 While located at 530 W. 24<sup>th</sup> Street, New York, NY 10011.  
or  
While located at DNA Gallery LLC, 288 Bradford Street, Provincetown,  
MA 02657.
2. \$ NIL For Furniture, Fixtures, Improvements and Betterments and for Electronic  
Data processing equipment at the location listed in 1. Above.  
or  
While located at 540 Massasoit Road, Eastham, MA 02651.

SMF 60 53 01 03

3. \$ NIL For Reference Libraries and/or Catalogues at the location listed in 1.  
Above.

- 4. \$ NIL While located within any Bank Vault in the USA/Canada.
- 5. \$ 100,000 While temporarily at any one Unnamed Location or in Transit, Worldwide.
- 6. \$2,000,000 Aggregate limit any one time.
- 7. \$1,000,000 For loss or damage by Earthquake or Volcanic Action at any one location during each separate 12-month period of this policy, and in the aggregate during each separate 12-month period of this policy, but in no event will we pay more than the limit shown above in A.1. or \$1,000,000, but in no event will we pay more than the limit shown above in A.1. or \$1,000,000, whichever is less, for loss or damage by earthquake in the \$1,000,000, whichever is less, for loss or damage by earthquake in the state of California.

- 8. \$1,000,000 For loss or damage by "Flood" at any one location and in the aggregate during each separate 12-month period of this policy, but in no event will we pay more than the limit shown above in A.1. or \$1,000,000, whichever is less, for loss or damage by "Flood" within any Special Flood Hazard Zone Designation A or V, or within any sub-designations of such zones A or V, as determined by the Federal Emergency Agency (FEMA).

**B. The most we will pay for loss or damage for a Coverage Extensions is the applicable Limit of Insurance in the Coverage Extensions section of the Coverage Form.**

**DEDUCTIBLES:**

- |          |  |
|----------|--|
| \$ 1,000 | In any one occurrence except   |
| \$10,000 | For Earthquake or Volcanic Action in the state of California; and                          |
| \$10,000 | For "Flood" in FEMA designated 100 year flood prone zones A or V and designated sub-zones. |

**CONDITIONS:**

Basis of Valuation - Selling Price less 20% or Cost Price plus 30% whichever is the greater at the time of loss; Items on Consignment to the Insured valued at Consigned values plus 10%; and as more fully described in the attached policy.

Terrorism Coverage is excluded.

30 days Cancellation Clause and as more fully described in the attached policy.

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782-452-9089

Feb 12 2004 3:09PM Travelers

(If required) Subject to satisfactory survey of the Insured's premises within 45 days of attachment, and compliance of recommendations, if any, within a timeframe to be agreed by Underwriters.

**PREMIUM:** \$8,800.00 per 12 month period.

**INSURED WITH:** Centennial Insurance Company a member of the Atlantic Mutual Insurance Group

**COVERAGE FORM:** Art, Antique & Collectibles Dealers / SMF 60 52 01 03

By: D DeWitt Stern Group, Inc.  
Fine Arts Department

Date: April 30, 2003

**FOR INTERNAL CODING PURPOSES:**

SBU:	Marine, Line 3
Prod.:	001-6801, 2560
Deductible:	07
ISO:	332
Direct Bill:	863

SMF 60 53 01 03

**DeWitt Stern Group  
Art, Antique and Collectibles Dealers  
Coverage Form**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and what is not covered. Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance. Other words and phrases that appear in quotation marks have special meaning. Refer to the DEFINITIONS section in this Coverage Form.

**A. COVERAGE**

We will pay for loss of or damage to Covered Property from any of the Covered Causes of Loss.

**1. COVERED PROPERTY**

Covered Property, as used in this coverage form, means "fine arts" which is:

- a. Your stock held for sale, including your interest in property jointly owned with others;
- b. Property of others which is in your care, custody or control and which, prior to loss or damage, you have been instructed to insure;
- c. Property for which payment is being made in installments while such property is located at the buyer's location including transit between your location and the buyers location except where title to the property has passed to the buyer, subject to such property being included in your inventory until title passes from you to the buyer;
- d. Your reference library and other reference material you own, if a limit is shown on the declarations page;
- e. Furniture, fixtures, improvements and betterments belonging to you, and;
- f. "Hardware" and "data/media" belonging to you, if a limit is shown on the declarations page.

**2. LEGAL LIABILITY**

We will cover your legal liability as a bailee for "fine arts" of others in your care, custody or control which you have been instructed not to insure. The most we will pay in any one occurrence for defense costs and any judgments is the Limit of Insurance shown on the Declarations page in clause A. 1.

**3. PROPERTY NOT COVERED**

Covered Property does not include:

- a. Shipments by mail except registered first class or certified mail;
- b. Contraband or property in the course of illegal transportation or trade; or
- c. Land (including land on which the property is located) or water.

**4. COVERED CAUSES OF LOSS**

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS to Covered Property except those causes of loss listed in the Exclusions.

**5. COVERAGE EXTENSIONS**

**a. Debris Removal**

(1) We will pay your expenses to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period.

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The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

(2) The most we will pay under this Coverage Extension is 25% of:

(a) The amount we pay for the direct physical loss or damage to Covered Property; plus

(b) The deductible in this policy applicable to that loss or damage.

(3) Payment under this Coverage Extension will not increase the applicable Limit Of Insurance, but if:

(a) The sum of direct physical loss or damage and debris removal expense exceeds the Limit Of Insurance; or

(b) The debris removal expense exceeds the amount payable under the 25% limitation;

We will pay up to an additional \$5,000 in any one occurrence under this Coverage Extension.

(4) This Coverage Extension does not apply to costs to:

(a) Extract "pollutants" from land or water; or

(b) Remove, restore or replace polluted land or water.

**b. Pollutant Clean-Up And Removal**

We will pay your expenses to extract "pollutants" from land or water at the premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause Of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause Of Loss occurs.

This Coverage Extension does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants." But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Coverage Extension is \$10,000 for the sum of all such expenses including testing and legal expenses arising out of Covered Causes Of Loss occurring during each separate 12-month period of this policy.

**c. Expediting Expenses**

We will pay your actual and reasonable costs resulting from a covered loss or damage to Covered Property to expedite repair or replacement including, but not limited to, overtime, night work, work on public holidays, rapid transportation of people and/or materials, and extra costs of temporary repair.

This Coverage Extension will apply from the date of the covered loss or damage and for such time reasonably necessary to repair, replace, or rebuild the Covered Property.

The most we will pay for loss or damage under this Coverage Extension is \$1,000

**d. Inventory, Appraisals, and Loss Adjustment Expenses**

We will pay the reasonable expenses you incur at our request to assist us in determination of the amount of the covered loss, including the extra wages necessarily incurred by your employees for preparing inventories and other loss information for completion of your proof of loss.

But we will not pay for:

(1) Expenses to prove that the loss or damage is covered;

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732-452-9099  
p.8

Feb 12 2004 3:10PM  
Travelers

- (2) Expenses incurred under the Appraisal section of the Commercial Inland Marine  
Conditions:  
(3) Expenses incurred for examinations under oath, even if required by us; or  
(4) Expenses incurred for public adjusters or any legal fees.  
The most we will pay for loss or damage under this Coverage Extension is \$1,000.

e. **Fire Department Service Charges**

We will pay your expense for fire department service charges when the fire department is called to save or protect Covered Property from a Covered Cause of Loss.

The most we will pay for loss or damage under this Coverage Extension is \$2,500.

The policy deductible will not apply to this Coverage Extension.

f. **Refilling of Fire Protection Devices**

We will pay your actual costs to refill fire protection devices which are discharged as a result of a Covered Cause of Loss.

The most we will pay for loss or damage under this Coverage Extension is \$2,500.

g. **USPS Shipments**

We will pay your actual loss sustained for Covered Property in transit via the United States Postal Service (USPS), other than first class or registered mail, from a Covered Cause of Loss.

The most we will pay for loss or damage under this Coverage Extension is \$2,500 per package and \$10,000 during the term of this policy.

h. **Damage to Buildings as a Result of Theft**

We will pay your actual and reasonable costs to repair damage caused by theft or attempted theft to that part of any building containing Covered Property, or equipment within the building used to maintain or service the building, but only if you own the building or are legally responsible for the damage.

The most we will pay for loss or damage under this Coverage Extension is the lesser of \$10,000 or 10% of the applicable Limit of Insurance stated in the Declaration page.

i. **Damage to Packing Cases and Show Cases**

We will pay your actual and reasonable costs to repair damage caused by a Covered Cause of Loss to Packing Cases and Show Cases.

The most we will pay for loss or damage under this Coverage Extension is \$5,000.

j. **Damage to Valuable Papers and Records**

We will pay your actual and reasonable costs to repair damage caused by a Covered Cause of Loss to Valuable Papers and Records which are not for sale; are used for the conduct of your business; and are located specifically in the part of your premises your occupy for your business.

The most we will pay for loss or damage under this Coverage Extension is \$5,000.

k. **Damage to Accounts Receivable**

We will pay your actual loss sustained for your Accounts Receivable balances owed you which are used for the conduct of your business, and are located specifically in the part of your premises your occupy for your business from a Covered Cause of Loss.

The most we will pay for loss or damage under this Coverage Extension is the lesser of \$10,000 or 10% of the applicable Limit of Insurance stated in the Declaration Page as determined below:

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1. Sums owed you by customers which you cannot collect;
2. Interest charges you must pay on loans obtained to offset impaired collections;
3. That part of your collection costs that exceed your normal costs; and
4. Other costs you reasonably incur to restore your records...

**1. Money In Locked Safes or Vaults**

We will pay your actual loss sustained for money used for the conduct of your business but only while located in your locked safe or vault at the premises specified in the Declarations page and only for loss or damage caused by theft or attempted theft where there are visible signs that the theft was a result of forced entry.

The most we will pay for loss or damage under this Coverage Extension is \$1,000.

**B. EXCLUSIONS**

1. We will not pay for a loss or damage caused directly or indirectly by any of the following.  
Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage.

**a. Governmental Action**

**Seizure or destruction of property by order of governmental authority.**

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Form.

**b. Nuclear Hazard**

- (1) Any weapon employing atomic fission or fusion; or
  - (2) Nuclear reaction or radiation or radioactive contamination from any other cause.
- But we will pay for direct loss or damage caused by resulting fire if the fire would be covered under this Coverage Form.

**c. War And Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**d. "Flood"**

- But we will pay for loss or damage by resulting fire or explosion.  
This exclusion does not apply to property in transit or if a Limit of Insurance is shown for "Flood" in this Coverage Form Declarations.

**e. Earthquake or Volcanic Action**

But we will pay for loss or damage by resulting fire or explosion.  
All earthquake shocks that occur within any 168-hour period will constitute a single earthquake.

This exclusion does not apply to property in transit or if a Limit of Insurance is shown for Earthquake or Volcanic Action in this Coverage Form Declarations...

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Delay, loss of use, loss of market or any other consequential loss.
- b. Dishonest or criminal acts committed by:

- (1) You, any of your partners, employees, directors, trustees, or authorized representatives;
  - (2) A manager or a member if you are a limited liability company;
  - (3) Anyone else with an interest in the property or their employees or authorized representatives; or
  - (4) Anyone else to whom the property is entrusted for any purpose.
- This exclusion applies whether or not such persons are acting alone or in collusion with other persons or such acts occur during the hours of employment.

But this exclusion does not apply to Covered Property that is entrusted to others who are carriers for hire or acts of destruction by your employees.

But theft by employees is not covered.

- c. Any willful act intended to cause loss or damage committed by you or anyone else at your direction.

- d. Unexplained disappearance.

- e. Shortage found upon taking inventory.

- f. Theft from an unattended vehicle unless at the time of the theft its windows, doors and compartments were closed and locked, and there are visible signs that the theft was a result of forced entry, excepting carriers for hire.

- g. Any repairing, restoration or retouching of covered property.

- h. Financial default or default in payment to you, which includes the dishonor or other default in connection with checks or other instruments of payment accepted by you in good faith, insolvency of any kind (including administration and receivership), judicial and quasi-judicial seizure or distraintment or forfeiture (including wrongful seizure or distraintment or forfeiture) or any default whatsoever in payment.

- 3. We will not pay for loss or damage caused by or resulting from any of the following. But if loss or damage by a Covered Cause Of Loss results, we will pay for that resulting loss or damage.

- a. Wear and tear, gradual deterioration, any quality in the property that causes it to damage or destroy itself, hidden or latent defect.

- b. Fading; creasing, denting, scratching or tearing; thinning; color transfer; dampness; or temperature extremes.

- c. Insects, birds, rodents or other animals.

- d. Bacteria, fungus or mold.

- e. An error or omission in programming or instructions to the "hardware".

#### C. LIMITS OF INSURANCE

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in this Coverage Form Declarations.

#### D. DEDUCTIBLE

We will not pay for loss or damage in any one occurrence until the amount of the adjusted loss exceeds the Deductible shown in this Coverage Form Declarations.  
We will then pay the amount of the adjusted loss in excess of the Deductible, up to the applicable Limit of Insurance.

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**E. ADDITIONAL CONDITIONS**

The following conditions apply in addition to the Commercial Inland Marine Conditions and Common Policy Conditions:

**1. COVERED TERRITORY**

We will cover property wherever located within the World, except where prohibited by law.

**2. VALUATION**

The valuation condition contained in the Commercial Inland Marine Conditions is deleted and replaced by the following:

In the event of loss or damage, the value of Covered Property which is:

(a) Covered Property you own will be the that valuation as noted in the Declarations page.

(b) Covered Property which has been sold but not delivered will be selling price plus actual incurred expenses incurred.

(c) Covered Property of others held by you on consignment or entrusted to you will be the consigned or entrusted value plus 10%.

(d) Covered Property of others or Covered Property owned on joint account held by you will be the amount agreed upon, prior to loss or damage, by you and the lender or joint owner, otherwise we will not be liable beyond the Actual Cash Value of that Property.

(e) Covered Property as described in clause A. 2, 3 and 4. will be the Replacement Cost Value of that Property, except "media/data" will be the actual cost of reproduction or replacement unless it is not replaced or reproduced, when we will not pay more than the cost of the blank value of the "media".

In the event of loss or damage, the value of the property will be determined as of the time of loss or damage.

**3. PAIR AND SETS**

The Pair and Sets condition contained in the Commercial Inland Marine Conditions is deleted and replaced by the following:

In case of loss or damage to more than one article which is part of a pair or set we will pay you, if you choose, the value, as established in the Valuation clause of this Coverage form, of the pair or set. If you choose this option, you will give us whatever remains of the pair or set.

Otherwise, we will either:

(a) Repair or replace any part to restore the pair or set to its value before the loss, or

(b) Pay the difference between the value of the pair or set before and after the loss. However, in no event will we pay more than the applicable Limit of Insurance shown in the Declarations page.

**4. IMPAIRMENT OF RECOVERY RIGHTS**

If by any act or agreement after loss or damage you impair our right to recover from others liable for the loss or damage, we will not pay you for that loss or damage.

**5. PACKING AND SHIPPING**

You agree that Covered Property will be packed and unpacked by competent packers.

**6. ALARM MAINTENANCE**

You agree that Covered Property will be protected by the Alarm system (if any) installed and maintained at your Premises during the course of this policy term.

**7. SHOWS AND EXHIBITIONS**

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You agree that Covered Property, while located at shows and exhibitions, will be located within a fully locked room(s) which are alarmed and guarded as declared on your application during any time other than standard opening hours. You further agree that Covered Property while displayed will be attended at all times.

#### **8. RECORDS**

You agree to keep detailed and itemized inventory of all Covered Property.

#### **9. NOTICE OF LOSS**

In the event of loss or damage to Covered Property, you are required, as soon as practicable, to report in writing to us or DeWitt Stern Group, Inc., 420 Lexington Avenue, Suite 2720, New York, NY 10170 every event which may give rise to a claim under this insurance. You must also file, if we request, within ninety (90) days from date of discovery of such loss or damage, a detailed proof of loss.

#### **10. REWARDS**

In the event of covered loss or damage which, in our opinion, is of sufficient amount to warrant such action, we may advertise a reward. This reward may be advertised in your name or your name and ours, and would be available for information which would lead to the arrest and conviction of the person(s) causing the loss and/or the return of stolen property.

Whether such a reward is offered and the amount of such reward will be solely at our discretion but will not affect your limits of insurance in any way.

You may, at your option, add to the amount of the reward we offer or offer a reward yourself if we decide not to offer one. But we will not reimburse you for such reward or for any related expense.

#### **11. BUY BACK AGREEMENT**

If we recover property for which we have already paid you, you have the right to buy the property back from us. You will pay an amount equal to the current market value of the recovered property but not more than what we paid you, plus an amount for loss adjustment and recovery expenses.

We will make every effort to notify you of your right to buy back damaged or recovered property. You will have 60 days from the time you receive our notice to repurchase the property.

#### **12. NO CLAIMS BONUS, IF POLICY RENEWED**

In the event no claims for loss or damage are incurred under this policy and the prior two policy terms, not less than 36 months, we agree to apply a credit equal to 5% of the annual premium paid under this policy, to the renewal premium of this policy.

#### **F. DEFINITIONS**

1. "Fine Arts" means paintings, etchings, drawings (including frames, glasses and shadow boxes); rare books, manuscripts, rugs, tapestries, sculptures, statuary and other bona fide works of art, rarity, historic value or artistic merit.
2. "Flood" means waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.
3. "Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
4. "Hardware" means a network of machine components capable of accepting information or converting material, processing it according to a plan or program; and producing the desired results.
5. "Data/media" means the facts, concepts, instructions, software or programs converted to a form usable by the "hardware" and includes the disks, compact disks, disk packs, storage modules or other "hardware" usable materials on which these items are stored.

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## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions:

**A. Cancellation**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for non-payment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

**B. Changes**

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

**C. Examination Of Your Books And Records**

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

**D. Inspections And Surveys**

1. We have the right to:
  - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
    - a. Are safe or healthful; or
    - b. Comply with laws, regulations, codes or standards.
  3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
  4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

**E. Premiums**

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
  2. Will be the payee for any return premiums we pay.
- F. Transfer Of Your Rights And Duties Under This Policy**
- Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.
- If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

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Feb 12 2004 3:11PM Travelers

# COMMERCIAL INLAND MARINE CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and applicable Additional Conditions in Commercial Inland Marine Coverage Forms:

## LOSS CONDITIONS

### A. Abandonment

There can be no abandonment of any property to us.

### B. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

### C. Duties In The Event Of Loss

You must see that the following are done in the event of loss or damage to Covered Property:

1. Notify the police if a law may have been broken.
2. Give us prompt notice of the loss or damage. Include a description of the property involved.
3. As soon as possible, give us a description of how, when and where the loss or damage occurred.
4. Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will

not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

5. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

6. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

7. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.
8. Send us a signed, sworn proof of loss containing the information we request to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

9. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or suit.

10. Cooperate with us in the investigation or settlement of the claim.

### D. Insurance Under Two Or More Coverages

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

**E. Loss Payment**

1. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
2. We will not pay you more than your financial interest in the Covered Property.
3. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claim against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
4. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
5. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss if you have complied with all the terms of this Coverage Part and:
  - a. We have reached agreement with you on the amount of the loss; or
  - b. An appraisal award has been made.
  - c. We will not be liable for any part of a loss that has been paid or made good by others.

- a. Repair or replace any part to restore the pair or set to its value before the loss or damage; or
- b. Pay the difference between the value of the pair or set before and after the loss or damage.

**2. Parts**

In case of loss or damage to any part of Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part

**H. Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

**I. Reinstatement Of Limit After Loss**

The Limit of Insurance will not be reduced by the payment of any claim, except for total loss or damage of a scheduled item, in which event we will refund the unearned premium on that item.

**J. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property.
2. After a loss to your Covered Property only if at time of loss, that party is one of the following:
  - a. Someone insured by this insurance; or
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you.

This will not restrict your insurance.

**G. Pair, Sets Or Parts**

**1. Pair Or Set**

In case of loss or damage to any part of a pair or set we may:

**GENERAL CONDITIONS**

**A. Concealment, Misrepresentation Or Fraud**

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other insured, at any time, concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

**B. Control Of Property**

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

**C. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all the terms of this Coverage Part; and
2. The action is brought within 2 years after you first have knowledge of the direct loss or damage.

**D. No Benefit To Bailee**

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

**E. Policy Period**

We cover loss or damage commencing:

1. During the policy period shown in the Declarations; and
2. Within the coverage territory.

**F. Valuation**

The value of property will be the least of the following amounts:

1. The actual cash value of that property;
2. The cost of reasonably restoring that property to its condition immediately before loss or damage; or
3. The cost of replacing that property with substantially identical property.

In the event of loss or damage, the value of property will be determined as of the time of loss or damage.

JANUARY 30

Patrick J. Corbett (PC 2076)  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE COMPLAINT OF  
CONSTITUTION STATE SERVICES LLC,  
Plaintiff,

-against-

DNA GALLERY, LLC,

Defendant.

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**SUMMONS AND COMPLAINT**

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RUBIN, FIORELLA & FRIEDMAN LLP  
*Attorneys for Defendant/Third-Party Plaintiff*  
292 Madison Avenue, 11<sup>th</sup> Floor  
New York, New York 10017  
(212) 953-2381  
Our File No. 436-9858

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To:  
Attorney(s) for  
Service of a copy of the within is hereby admitted.  
Dated:

\_\_\_\_\_  
Attorney(s) for

**PLEASE TAKE NOTICE**

Notice of Entry \_\_\_\_\_ that the within is a (certified) true copy of a  
of the within named Court on \_\_\_\_\_, 2002.  
Notice of Settlement \_\_\_\_\_ that an order of which the within is a true copy, will be presented for settlement to the  
HON. \_\_\_\_\_, one of the judges of the within named Court, on \_\_\_\_\_, 2007 at \_\_\_\_\_.m.

Dated:

Yours, etc.,

**RUBIN, FIORELLA & FRIEDMAN**  
LLP  
*Attorneys for Defendant/Third-Party Plaintiff*  
292 Madison Avenue, 11<sup>th</sup> Floor  
New York, New York 10017 (212) 953-2381